

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #16	CCRB Case #: 201610413	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/07/2016 12:52 AM	Location of Incident: Pennsylvania Avenue and Livonia Avenue	Precinct: 75	18 Mo. SOL 6/7/2018	EO SOL 6/7/2018	
Date/Time CV Reported Wed, 12/21/2016 4:29 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/21/2016 4:29 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Samuel Hui	28856	953978	075 PCT
2. SGT Stephen Hillmann	05359	941904	075 PCT
3. POM Bryan Scheblein	26121	955457	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Samuel Hui	Abuse: Police Officer Samuel Hui stopped the vehicle in which § 87(2)(b) Perlara, and an individual were occupants.	
B.SGT Stephen Hillmann	Abuse: Sergeant Stephen Hillmann stopped the vehicle in which § 87(2)(b) and an individual were occupants.	
C.POM Bryan Scheblein	Abuse: Police Officer Bryan Scheblein stopped the vehicle in which § 87(2)(b) and an individual were occupants.	
D.POM Samuel Hui	Abuse: Police Officer Samuel Hui threatened to issue summons to § 87(2)(b)	
E.POM Samuel Hui	Abuse: Police Officer Samuel Hui frisked § 87(2)(b)	
F.SGT Stephen Hillmann	Abuse: Sergeant Stephen Hillmann supervised the frisk of § 87(2)(b)	
G.POM Bryan Scheblein	Abuse: Police Officer Bryan Scheblein frisked an individual.	
H.SGT Stephen Hillmann	Abuse: Sergeant Stephen Hillmann supervised the frisk of an individual.	
I.POM Bryan Scheblein	Abuse: Police Officer Bryan Scheblein searched an individual.	
J.POM Bryan Scheblein	Abuse: Police Officer Bryan Scheblein frisked § 87(2)(b)	
K.SGT Stephen Hillmann	Abuse: Sergeant Stephen Hillmann supervised the frisk of § 87(2)(b)	
L.POM Bryan Scheblein	Abuse: Police Officer Bryan Scheblein searched § 87(2)(b)	
M.POM Samuel Hui	Abuse: Police Officer Samuel Hui searched the vehicle in which § 87(2)(b) and an individual were occupants.	

Officer(s)	Allegation	Investigator Recommendation
N.SGT Stephen Hillmann	Abuse: Sergeant Stephen Hillmann supervised the search of the vehicle in which § 87(2)(b) and an individual were occupants.	
O.SGT Stephen Hillmann	Abuse: Sergeant Stephen Hillmann made a video recording of § 87(2)(b)	
P.SGT Stephen Hillmann	Discourtesy: Sergeant Stephen Hillmann acted discourteously toward § 87(2)(b)	
Q.POM Samuel Hui	Discourtesy: Police Officer Samuel Hui acted discourteously toward § 87(2)(b)	
R.POM Samuel Hui	Discourtesy: Police Officer Samuel Hui spoke discourteously to § 87(2)(b)	
S.POM Samuel Hui	Abuse: Police Officer Samuel Hui threatened to arrest § 87(2)(b)	
T.POM Samuel Hui	Abuse: Police Officer Samuel Hui refused to provide his shield number to § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB on December 21, 2016 via telephone. On December 7, 2016, at approximately 12:52 a.m., § 87(2)(b) and an individual, known only as § 87(2)(b) were driving in the vicinity of Pennsylvania Avenue and Livonia Avenue in Brooklyn. PO Samuel Hui, Sgt. Stephen Hillmann, and PO Bryan Scheblein stopped their vehicle at the northeast corner of Pennsylvania Avenue and Livonia Avenue (**Allegation A through C**). PO Hui asked § 87(2)(b) to exit the vehicle and threatened to issue § 87(2)(b) a summons if § 87(2)(b) did not allow him to search the vehicle (**Allegation D**). PO Hui frisked § 87(2)(b) (**Allegation E and F**). PO Scheblein asked § 87(2)(b) to exit the vehicle. PO Scheblein frisked and searched § 87(2)(b) (**Allegations G, H, and I**). PO Scheblein asked § 87(2)(b) to exit the vehicle. PO Scheblein frisked and searched § 87(2)(b) (**Allegations J, K, and L**). PO Hui searched § 87(2)(b)'s vehicle (**Allegations M and N**). Sgt. Hillmann video recorded § 87(2)(b) using his personal cell phone (**Allegation O and P**). PO Hui threw a summons at § 87(2)(b) (**Allegation Q**). § 87(2)(b) asked the officers what probable cause meant and PO Hui responded saying, "It means we could fucking arrest you right now. Do you want to get arrested right now?" (**Allegations R and S**). PO Hui refused to provide his shield number to § 87(2)(b) (**Allegation T**).

§ 87(2)(a) 160.50

During the incident, § 87(2)(b) took a video using § 87(2)(b). The full video can be found under Board Review 04 and the SnagIt portions attached below can be found under Board Reviews 05 through 07. The transcription of the full video can be found under Board Review 03.



SnagIt 1.mp4



SnagIt 2.mp4



SnagIt 3.mp4

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to participate in mediation because he did not want to see the officers again and wanted them disciplined.
- § 87(2)(b) accepted mediation, but changed his mind after hearing that § 87(2)(b) had rejected mediation. § 87(2)(b) did not change his mind after hearing that § 87(2)(b) accepted mediation.
- § 87(2)(c), § 87(2)(b)
- § 87(2)(c), § 87(2)(b)

Civilian and Officer CCRB Histories

- This was § 87(2)(b)'s second complaint with the CCRB (Board Review 09).
- This was § 87(2)(b)'s first complaint with the CCRB (Board Review 10).
- PO Hui had one previous complaint with one allegation, which was not substantiated, against him over his four year tenure with the NYPD. § 87(2)(g)

- Sgt. Hillmann had one previous complaint with four allegations against him over his 10 year tenure with the NYPD.
 - In CCRB case number 201310969, Sgt. Hillman was cited for § 87(2)(g), § 87(4-b) and an allegation of a frisk was substantiated.
- PO Scheblein had five previous allegations stemming from three different complaints over his three year tenure with the NYPD. None of the allegations were substantiated. PO § 87(2)(g)

Potential Issues

- § 87(2)(b) and § 87(2)(b)'s friend, § 87(2)(b) Unknown, could not be reached for a statement. § 87(2)(b) and § 87(2)(b) did not have contact information for § 87(2)(b) and follow up attempts to obtain his full name and contact information were unsuccessful.

Findings and Recommendations

Explanation of Subject Officer Identification

- **Allegations F, H, K, and N** were pleaded against Sgt. Hillmann because he was the highest ranking officer on the scene at the time and was responsible for supervising the frisks of § 87(2)(b) and § 87(2)(b) and the search of the vehicle in which they were occupants.

Allegation A – Abuse of Authority: Police Officer Samuel Hui stopped the vehicle in which § 87(2)(b) and an individual were occupants.

Allegation B – Abuse of Authority: Sergeant Stephen Hillmann stopped the vehicle in which § 87(2)(b) and an individual were occupants.

Allegation C – Abuse of Authority: Police Officer Bryan Scheblein stopped the vehicle in which § 87(2)(b) and an individual were occupants.

It is undisputed that PO Hui, Sgt. Hillmann, and PO Scheblein stopped § 87(2)(b)'s vehicle.

§ 87(2)(b) was interviewed at the CCRB on December 27, 2016 (Board Review 11) and provided additional information in a follow up call on January 12, 2017 (Board Review 21). § 87(2)(b) stated that he, § 87(2)(b) and § 87(2)(b) had just been at the gym. After going to the gym, they drove to a store on Livonia Avenue near the intersection of Pennsylvania Avenue. § 87(2)(b) was driving his car, § 87(2)(b) was in the front passenger seat, and § 87(2)(b) was in the back passenger seat. § 87(2)(b) and § 87(2)(b) got out of the car and went to the store window while § 87(2)(b) stayed in the vehicle. § 87(2)(b) bought some milk, put his change into his right pants pocket, and then walked back to the car with § 87(2)(b). After being outside the car for approximately one minute, § 87(2)(b) got into the back passenger seat of the car and § 87(2)(b) got into the front passenger seat of the car. Immediately after they got into the car and started driving east on Livonia Avenue towards Pennsylvania Avenue, an unmarked police car behind them turned on its lights to pull them over. § 87(2)(b) turned left onto Pennsylvania Avenue and stopped at the northeast corner of Pennsylvania Avenue and Livonia Avenue. § 87(2)(b) did not observe § 87(2)(b) commit any traffic infractions before the officers pulled them over.

§ 87(2)(b) was interviewed at the CCRB on December 27, 2016 (Board Review 12). § 87(2)(b)'s statement corroborated § 87(2)(b)'s statement. § 87(2)(b) stated that he drives a blue, two-door, hatchback Honda Civic. § 87(2)(b) was double parked while § 87(2)(b) and

§ 87(2)(b) were at the store. After § 87(2)(b) and § 87(2)(b) got back in the car, § 87(2)(b) saw PO Hui, Sgt. Hillmann, and PO Scheblein in an unmarked car drive past them going the opposite direction on Livonia Avenue. § 87(2)(b) said that the officers “eyeballed” all of them. § 87(2)(b) observed the officers make a U-turn at the end of the block and pulled up behind him while he was waiting at the red light at Pennsylvania Avenue. § 87(2)(b) turned left onto Pennsylvania Avenue and immediately after, the officers turned on their lights to pull him over. § 87(2)(b) denied that his tail light was broken at the time of the incident.

PO Hui was interviewed at the CCRB on January 25, 2017 (Board Review 13). While facing eastbound on Livonia Avenue, PO Hui, who was driving the police vehicle, observed § 87(2)(b)'s vehicle with a defective third brake light. § 87(2)(b)'s vehicle was directly in front of the officers' police vehicle and PO Hui indicated that the third brake light is the top brake light on the back of the vehicle. PO Hui observed § 87(2)(b)'s vehicle for the duration of the red light, which he estimated was less than a minute. PO Hui did not observe § 87(2)(b) make any other VTL infractions. After the light turned green, PO Hui pulled the vehicle over, using turret lights, at the northeast corner of Pennsylvania Avenue and Livonia Avenue.

Sgt. Hillmann was interviewed at the CCRB on February 8, 2017 (Board Review 14). Sgt. Hillmann stated that the officers followed § 87(2)(b)'s vehicle for a few blocks after observing that it had a defective third brake light. Sgt. Hillmann was not sure which block the officers first observed the vehicle on. Sgt. Hillmann was seated in the back driver side seat of the police vehicle. PO Hui was driving the police vehicle and PO Scheblein was seated in the front passenger seat. Sgt. Hillmann did not recall who noticed the defective brake light first. Sgt. Hillmann did not make any other observations about the vehicle or notice any additional defects before the officers pulled it over. The officers activated their turret lights in the vicinity of Pennsylvania Avenue and Livonia Avenue to pull the vehicle over. § 87(2)(b) pulled over immediately when the officers signaled for him to do so.

PO Scheblein was interviewed at the CCRB on February 9, 2017 (Board Review 15). PO Scheblein stated that the officers observed § 87(2)(b)'s vehicle stopped at a bodega in the vicinity of Pennsylvania Avenue and Livonia Avenue. PO Scheblein believed that all of the occupants were inside the vehicle when the officers first observed the vehicle, but he was not sure. PO Scheblein and PO Hui saw that the top brake light on § 87(2)(b)'s vehicle was out. PO Scheblein did not recall any additional defects on the vehicle. The officers made a u-turn to get behind § 87(2)(b)'s vehicle. § 87(2)(b) turned left at the intersection and the officers pulled § 87(2)(b) over using their lights. § 87(2)(b) pulled over when the officers turned their lights on.

The video taken by § 87(2)(b) (Board Review 03 and 04) did not show whether or not § 87(2)(b)'s tail light was defective or not.

The courts have held that even where the suspected traffic violation had nothing to do with the officers' actual decision to stop a vehicle—the suspected traffic violation is a pretext for stopping the vehicle to investigate some other suspected illegal activity, United States v. Jenkins, 04 Cr. 179, 2004 (Board Review 22).

All officers stated that § 87(2)(b)'s brake light was out at the time of the incident. However, § 87(2)(b) denied that his brake light was out and stated that the only VTL infraction he committed was being double parked outside of the store, which none of the officers mentioned as a reason for pulling § 87(2)(b) over. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(g)

Allegation D – Abuse of Authority: Police Officer Samuel Hui threatened to issue summons to § 87(2)(b)

It is disputed whether or not PO Hui threatened to issue § 87(2)(b) a summons. § 87(2)(b) (Board Review 12) stated that PO Hui walked to the driver side window while PO Scheblein and Sgt. Hillmann went to the passenger side of the vehicle. PO Hui asked § 87(2)(b) for his license and registration. § 87(2)(b) gave PO Hui his license and registration and twice asked PO Hui why he was being stopped. PO Hui did not answer and instead asked § 87(2)(b) to get out of the car. § 87(2)(b) exited the vehicle and spoke with PO Hui near the back of the vehicle for about two minutes. PO Hui told § 87(2)(b) that he was going to search the vehicle. § 87(2)(b) told PO Hui that he did not consent to a search of his vehicle. PO Hui responded saying, “Well you’re going to let me search the vehicle, or I’m going to give you a summons for being parked in front of the store.” § 87(2)(b) told PO Hui that he did not care and he did not consent to PO Hui searching the vehicle and that there was no summons PO Hui could give him because he did not do anything wrong. § 87(2)(b) indicated that § 87(2)(b) and § 87(2)(b) were not asked to exit the vehicle until after this conversation took place.

§ 87(2)(b) (Board Review 11 and 21) said that the officers spoke with § 87(2)(b) about searching the vehicle and he was not exactly sure what they said. § 87(2)(b) thought that the officers might have told § 87(2)(b) to let them search the vehicle so he would not get a ticket, but he was not sure.

PO Hui (Board Review 13) said he asked § 87(2)(b) to exit the vehicle about 10 seconds after he began speaking with him. PO Hui brought § 87(2)(b) to the back of the vehicle. PO Hui explained to § 87(2)(b) the reason for the stop and why he was being asked out of the vehicle. PO Hui denied telling § 87(2)(b) “Well you’re going to let me search the vehicle, or I’m going to give you a summons for being parked in front of the store.” PO Hui denied threatening to issue § 87(2)(b) a summons before searching his vehicle.

Both Sgt. Hillmann (Board Review 14) and PO Scheblein (Board Review 15) denied hearing PO Hui threaten to issue a summons to § 87(2)(b) if he did not allow him to search the vehicle.

The conversation between § 87(2)(b) and PO Hui that occurred while § 87(2)(b) was still in the car was not captured in the video taken by § 87(2)(b) (Board Review 04).

§ 87(2)(g)

Allegation E – Abuse of Authority: Police Officer Samuel Hui frisked § 87(2)(b)

Allegation F – Abuse of Authority: Sergeant Stephen Hillmann supervised the frisk of § 87(2)(b)

Allegation G – Abuse of Authority: Police Officer Bryan Scheblein frisked an individual.

Allegation H – Abuse of Authority: Sergeant Stephen Hillmann supervised the frisk of an individual.

Allegation J – Abuse of Authority: Police Officer Bryan Scheblein frisked § 87(2)(b)

Allegation K – Abuse of Authority: Sergeant Stephen Hillmann supervised the frisk of § 87(2)(b)

It is undisputed that PO Hui frisked § 87(2)(b). It is undisputed that PO Scheblein frisked § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) (Board Review 12) stated that, at the time of the incident, he was wearing Adidas track pants which had two side pockets and no back pockets. § 87(2)(b) had nothing in his pockets. About two minutes after § 87(2)(b) exited the vehicle, § 87(2)(b) and § 87(2)(b) were directed to exit the vehicle. § 87(2)(b) told the officers that they did not do anything wrong and did not have any contraband on him. The officers told § 87(2)(b) that they saw him put something in his pocket. § 87(2)(b) told the officers that he had put change in his pocket after purchasing milk. PO Hui patted § 87(2)(b)'s pants pockets. PO Hui did not enter § 87(2)(b)'s pockets and did not take anything out of § 87(2)(b)'s pockets. PO Hui did not ask to check § 87(2)(b)'s pockets. § 87(2)(b) never objected to PO Hui patting his pockets. § 87(2)(b) later told § 87(2)(b) that PO Scheblein and Sgt. Hillmann “checked” him and § 87(2)(b) was not sure how PO Scheblein and Sgt. Hillmann “checked” them.

§ 87(2)(b) (Board Review 11 and 21) stated that, immediately when the officers stopped their vehicle, he took his phone out of his jacket pocket so he could start filming the incident. PO Hui, Sgt. Hillmann, and PO Scheblein immediately exited their vehicle after pulling them over. As the officers approached, § 87(2)(b) and § 87(2)(b) did nothing and were just sitting in the car. After the officers reached the vehicle, PO Hui was talking to § 87(2)(b) and said something about a tail light. § 87(2)(b) was not sure what else PO Hui said because he was focused on PO Scheblein who was speaking with him and § 87(2)(b) on the passenger side. PO Scheblein was holding a flashlight which he was shining into the car. § 87(2)(b) started recording using § 87(2)(b) on his cell phone. PO Scheblein told § 87(2)(b) that he observed § 87(2)(b) put something in his pocket while he was in the car. After a few minutes, PO Hui told § 87(2)(b) to get out of the car. A few minutes after § 87(2)(b) exited the vehicle, PO Scheblein told § 87(2)(b) and § 87(2)(b) to get out of the car. PO Scheblein searched § 87(2)(b). § 87(2)(b) was not sure if PO Scheblein patted § 87(2)(b)'s pockets before putting his hands inside § 87(2)(b)'s pockets, but § 87(2)(b) knew that PO Scheblein put his hands into § 87(2)(b)'s pockets. After, PO Scheblein searched § 87(2)(b). PO Scheblein patted all of § 87(2)(b)'s pockets and then put his hands inside all of § 87(2)(b)'s pockets. § 87(2)(b)'s pants had two side pockets and his jacket had two side pockets. There were no back pockets on § 87(2)(b)'s pants. PO Scheblein never took anything out of § 87(2)(b)'s pockets. § 87(2)(b) believed that PO Hui searched § 87(2)(b) but he could not see this because § 87(2)(b) was on the driver side of the vehicle and he was on the passenger side.

PO Hui (Board Review 13) stated that when the officers were pulling over § 87(2)(b) as his vehicle was coming to a complete stop, PO Hui observed § 87(2)(b) turn around and look at the officers, reach towards his chest and under the seat. PO Hui observed this while he was still in the police vehicle, coming to a stop behind § 87(2)(b)'s vehicle. PO Hui stated that, from his point of view, he observed a black object in § 87(2)(b)'s hand. When asked to describe the object, PO Hui said it could have been a handle or garbage, but he could not really tell because of the lighting. PO Hui could not remember if § 87(2)(b) reached under the left side or right side of the seat. PO Hui could not remember if § 87(2)(b) reached under the seat before or after he reached towards his chest. PO Hui said to PO Scheblein and Sgt. Hillmann, "Did you see that? The rear passenger just reached under the seat." PO Hui did not remember if PO Scheblein and Sgt. Hillmann said that they also observed this. PO Hui said that the black object was no longer in § 87(2)(b)'s hand when the officers approached the vehicle. PO Hui did not remember if there was anything in § 87(2)(b)'s hand when the officers approached the vehicle, but said that there was no weapon in § 87(2)(b)'s hand when the officers approached the vehicle. PO Hui approached the driver side of the vehicle. PO Hui could not remember specifically where PO Scheblein and Sgt. Hillmann were positioned, but said that one of them was on the passenger side and the other was at the rear of the vehicle. As noted above, PO Hui asked § 87(2)(b) to exit the vehicle about 10 seconds after he began speaking with him. PO Hui explained to § 87(2)(b) the reason for the stop, which was that his brake light was out, and the reason they were being removed from the vehicle, which was that the officers suspected them of having a weapon. PO Hui did not remember § 87(2)(b) saying anything in response to this. When asked if he suspected § 87(2)(b) of having a weapon, PO Hui initially said no, but then said that he "could not say no." PO Hui denied seeing § 87(2)(b) make any furtive movements and said that § 87(2)(b) did not make any movements to raise his level of suspicion to the point where he thought § 87(2)(b) might have a weapon. PO Hui did not remember observing any bulges on § 87(2)(b). PO Hui did not remember if he frisked § 87(2)(b) or not. PO Hui said that he definitely did not search § 87(2)(b). About 10 seconds after PO Hui removed § 87(2)(b) from the vehicle, one of his partners removed § 87(2)(b) and § 87(2)(b) from the vehicle. PO Hui did not hear if § 87(2)(b) or § 87(2)(b) said anything when they were asked to exit the vehicle. PO Hui did not remember observing the § 87(2)(b) and § 87(2)(b) being frisked. PO Hui emphasized that he only interacted with § 87(2)(b).

PO Scheblein (Board Review 15) stated that when the officers turned on their lights to pull § 87(2)(b) over, § 87(2)(b) looked back at the officers and his eyes were "all blared out like he just saw a ghost." When the officers exited their vehicle and were approaching § 87(2)(b)'s vehicle, PO Scheblein saw § 87(2)(b) reach across his body and put his right hand into his jacket pocket. § 87(2)(b) then made a move from his jacket to the floor of the car. § 87(2)(b) came back up and put his hand back into his jacket pocket while looking at the officers. PO Scheblein initially stated that he saw a "black handle" which he said could be indicative of either a knife or a firearm. When asked at what point he saw the black handle, PO Scheblein said that he did not see a black handle, but that he thought he saw a black handle. PO Scheblein went on to further explain § 87(2)(b)'s movements, indicating that § 87(2)(b)'s movements took about the amount of time it would take for someone to take their phone out of their pocket. When asked again when he might have seen a black handle, PO Scheblein said that he remembered seeing § 87(2)(b)'s elbow being up and then seeing something reflective in his hand. PO Scheblein approached the passenger side of the vehicle and PO Hui approached the driver side. PO Scheblein did not remember where Sgt. Hillmann was standing. PO Scheblein said that PO

Hui probably asked § 87(2)(b) to exit the vehicle. PO Scheblein did not know if PO Hui frisked § 87(2)(b) because he was only focusing on § 87(2)(b) and § 87(2)(b). PO Scheblein did not remember exactly what was said back and forth. PO Scheblein said he only spoke to § 87(2)(b) and § 87(2)(b) and that they were saying that the officers needed probable cause to take them out of the car and asked why the officers were stopping them a lot of times. PO Scheblein said it raised his suspicion even more because the occupants did not want to get out of the vehicle. PO Scheblein estimated that the officers spoke to § 87(2)(b) and § 87(2)(b) for about 30 seconds before asking them to exit the vehicle. PO Scheblein thought that § 87(2)(b) took his phone out right before the officers asked everyone to get out of the vehicle. PO Scheblein asked § 87(2)(b) to exit the vehicle first and frisked him. PO Scheblein frisked § 87(2)(b)'s pockets and waistband area to make sure that he did not have any weapons on him. PO Scheblein did not find anything on § 87(2)(b). After frisking § 87(2)(b), PO Scheblein asked § 87(2)(b) to exit the vehicle. PO Scheblein frisked § 87(2)(b)'s jacket and the right side of his pants from his right ankle up his right leg. PO Scheblein said he did this because of the way that § 87(2)(b) had motioned across his body and then down. PO Scheblein wanted to check if § 87(2)(b) put something in his pants or placed something in his sock. When asked if he saw any bulges on § 87(2)(b) or § 87(2)(b), PO Scheblein said that he remembered it was a cold night. PO Scheblein said § 87(2)(b) was wearing a big coat at the time of the incident. PO Scheblein said that a bulge plays a factor, but now people carry around "subcompact" weapons that are about the size of a phone, so a bulge might not always be there.

Sgt. Hillmann (Board Review 14) also stated that he observed § 87(2)(b)'s motion towards the floor and towards his jacket pocket when the officers approached § 87(2)(b)'s vehicle. Sgt. Hillmann said that it looked as if § 87(2)(b) was fumbling with something. Sgt. Hillmann did not see § 87(2)(b) holding any objects. Sgt. Hillmann was standing near the rear passenger side of the vehicle. Sgt. Hillmann said that he could see into the vehicle from where he was standing and that § 87(2)(b) stopped moving when the officers were at the sides of the vehicle. Sgt. Hillmann could not remember if § 87(2)(b) had anything in his hands at this point. A few seconds after the officers got to the sides of the vehicle, the officers ordered everyone to exit the vehicle for the officers' safety. § 87(2)(b) was filming during the incident and had his phone in his hand when he exited the vehicle. All of the occupants of the vehicle were frisked to see if they had a weapon after they were asked to exit the vehicle. PO Hui frisked § 87(2)(b) first. Sgt. Hillmann could not see if there were any bulges on § 87(2)(b). After PO Hui frisked § 87(2)(b), PO Scheblein frisked § 87(2)(b) and § 87(2)(b). Sgt. Hillmann stated that PO Scheblein did not search § 87(2)(b) or § 87(2)(b). Sgt. Hillmann did not remember seeing any bulges on § 87(2)(b) or § 87(2)(b). Sgt. Hillmann said that he was not paying much attention when PO Scheblein was frisking § 87(2)(b) and § 87(2)(b) because he was standing at the back of the vehicle with § 87(2)(b). Nothing was discovered as a result of the frisk.

The video taken by § 87(2)(b) via § 87(2)(b) (Board Reviews 03, 04, and 05) did not capture § 87(2)(b) being frisked. At 00:10 PO Scheblein is pictured outside the passenger door with a flashlight. PO Scheblein tells § 87(2)(b) that they were stopped for a VTL infraction. PO Scheblein asks § 87(2)(b) and § 87(2)(b) to step out of the car, put their hands on the roof, and stand still. At 00:44, § 87(2)(b) is pictured standing outside the door. Only his lower body is visible and he is being frisked by PO Scheblein. § 87(2)(b) moves to the back of the car. PO Scheblein then asks § 87(2)(b) if he needs to worry about anything in his pocket. § 87(2)(b) tells PO Scheblein that it is just his wallet and change. PO Scheblein then tells § 87(2)(b) "Because this is the reason why the car is... This is why everyone is leaving the car now. Because

§ 87(2)(g)

Allegation I – Abuse of Authority: Police Officer Bryan Scheblein searched an individual.

Allegation L – Abuse of Authority: Police Officer Bryan Scheblein searched § 87(2)(b)

It is disputed whether or not PO Scheblein searched § 87(2)(b) and § 87(2)(b)

As noted above, § 87(2)(b) (Board Review 11 and 21) stated that PO Scheblein placed his hands into § 87(2)(b)'s pockets and his pockets.

PO Scheblein (Board Review 15) denied searching § 87(2)(b) and § 87(2)(b)

While § 87(2)(b) alleged that PO Scheblein entered his pockets and § 87(2)(b)'s pockets, PO Scheblein denied doing so. PO Hui and Sgt. Hillmann both denied seeing PO Scheblein do this and § 87(2)(b) only learned that PO Scheblein “checked” § 87(2)(b) and § 87(2)(b) after it occurred. The video captures PO Scheblein frisking § 87(2)(b) but not entering any pockets.

§ 87(2)(g)

Allegation M – Abuse of Authority: Police Officer Samuel Hui searched the vehicle in which § 87(2)(b) and an individual were occupants.

Allegation N – Abuse of Authority: Sergeant Stephen Hillmann supervised the search of the vehicle in which § 87(2)(b) and an individual were occupants.

It is undisputed that PO Hui searched § 87(2)(b)'s vehicle.

§ 87(2)(b) (Board Review 11) stated that, after he, § 87(2)(b) and § 87(2)(b) were frisked, the officers told them to stand at the behind the car and face the officers' vehicle. Sgt. Hillmann stood at the back of the vehicle with them. One officer entered and searched § 87(2)(b)'s vehicle. § 87(2)(b) could not see exactly what PO Hui and PO Scheblein were doing because he was facing away from § 87(2)(b)'s car, but he thought he saw an officer halfway inside the driver's side door of § 87(2)(b)'s car. § 87(2)(b) was not sure if it was PO Hui or PO Scheblein who searched the vehicle. After about three minutes, the officers told § 87(2)(b) and § 87(2)(b) to get back inside the vehicle and they complied.

§ 87(2)(b)'s statement (Board Review 12) corroborated § 87(2)(b)'s statement. § 87(2)(b) stated that at one point he turned around and “peeked” at the officers and saw PO Hui inside the car. First PO Hui checked the front area of the car and then moved the seat forward and checked the back area of the car. § 87(2)(b) stated that he also observed PO Hui open the glove compartment. The officers did not remove anything from the car. The officers never looked in the trunk of the vehicle.

PO Hui (Board Review 13) stated that he went inside the vehicle and looked under the driver's seat and passenger's seat because he had observed § 87(2)(b) reach under the seats earlier, but was not sure which seat he reached under. PO Hui was searching to see if there were any weapons under the seats. PO Hui only found garbage and plastic bottles. PO Hui denied looking anywhere in the car other than under the seats. PO Hui denied opening any compartments. PO Hui denied opening the glove compartment of the vehicle.

Nervousness and repeated looks at the officer's vehicle alone are insufficient to provide reasonable suspicion that there was a weapon located in a defendant's vehicle. Additionally, once an individual exits a vehicle, if there is no "actual and specific" threat to the safety of the officer, or any further justification to search the vehicle, such a search is unlawful, People v. Hackett, A.D.3d 1122; 850 N.Y.S.2d 676, 2008 (Board Review 17).

§ 87(2)(b)

Allegation O – Abuse of Authority: Sergeant Stephen Hillmann made a video recording of

§ 87(2)(b)

Allegation P – Discourtesy: Sergeant Stehpen Hillmann acted discourteously towards

§ 87(2)(b)

It is undisputed that Sgt. Hillmann took out his personal cell phone and said he was going to video record § 87(2)(b). It is disputed whether or not Sgt. Hillmann video recorded § 87(2)(b) on his personal cell phone.

During his interview, § 87(2)(b) (Board Review 11) indicated that Sgt. Hillmann was pictured in the video saying he was going to film him and then held up his phone. § 87(2)(b) was not sure what type of phone Sgt. Hillmann was holding up.

§ 87(2)(b) (Board Review 12) stated that an officer took at his phone at one point and said he was recording also. § 87(2)(b) thought this was petty and did not think that the officer actually filmed anything on his phone.

Sgt. Hillmann (Board Review 14) stated that, while he was at the rear of the vehicle with § 87(2)(b) and § 87(2)(b) was filming on his cell phone and saying that cops had beaten him up and he was filming for his safety. Sgt. Hillmann decided to mimic § 87(2)(b) and took out his personal cell phone to film § 87(2)(b). Sgt. Hillmann stated that he never actually filmed § 87(2)(b) and never turned his phone on. Sgt. Hillmann only took his phone out for two seconds and said that he was going to record § 87(2)(b) for his safety. Immediately, Sgt. Hillmann put his phone back in his shirt pocket.

In the video taken by § 87(2)(b) (Board Review 03, 04, and 06) at 03:00, Sgt. Hillmann is pictured in the video taking his cell phone out of his front pocket and saying, "Should I film you?" Sgt. Hillmann holds his camera up to § 87(2)(b)'s camera. Sgt. Hillmann puts his phone away at 03:17, 17 seconds after he took it out.

Officers are prohibited from using any personal electronic/digital device to record video and/or audio or take photographs during a police encounter, Patrol Guide Procedure 203-06, “Performance on Duty – Prohibited Conduct” (Board Review 18).

Members of service should be courteous and respectful, Patrol Guide Procedure 203-09, “Public Contact – General” (Board Review 19).

§ 87(2)(g)

Allegation Q – Discourtesy: Police Officer Samuel Hui acted discourteously toward § 87(2)(b)

§ 87(2)(b) (Board Review 12) stated that about 15 minutes after he, § 87(2)(b) and § 87(2)(b) got back in the vehicle, PO Hui returned to his driver side window to issue him a summons for having a defective brake light. § 87(2)(b) told PO Hui that his brake light was not broken and there was nothing wrong with it. PO Hui told § 87(2)(b) to get his brake light fixed and bring the receipt to the stationhouse within 24 hours. § 87(2)(b) asked how he could get a receipt for something that was not broken. § 87(2)(b) said that his car is a standard transmission so he did not have to press the brake at the stop light. PO Hui got fed up and threw § 87(2)(b)'s license, registration, insurance, keys, and the summons onto § 87(2)(b)'s lap. § 87(2)(b) (Board Review 11) stated that PO Hui threw the summons at § 87(2)(b)'s face.

PO Hui (Board Review 13) stated that § 87(2)(b) had his hand open near his lap and was not reaching up for the summons. PO Hui reached into the window and dropped the summons into § 87(2)(b)'s hand. PO Hui denied throwing the summons at § 87(2)(b).

Sgt. Hillmann (Board Review 14) stated that, while PO Hui and § 87(2)(b) “did not make great contact” when PO Hui issued § 87(2)(b) the summons, PO Hui did not throw the summons at § 87(2)(b).

PO Scheblein (Board Review 15) did not see PO Hui throw the summons at § 87(2)(b).

In the video taken by § 87(2)(b) (Board Review 03, 04, and 07) at 14:04, PO Hui returns to the car to issue § 87(2)(b) a summons. PO Hui and § 87(2)(b) proceed to argue about the validity of the summons. At 14:25 PO Hui holds the summons inside § 87(2)(b)'s window and says, “You want it?” § 87(2)(b) responds asking how he is supposed to get a receipt for his tail light. At 14:27, PO Hui tosses the summons, other documents, and § 87(2)(b)'s keys into the car.

Members of service should be courteous and respectful, Patrol Guide Procedure 203-09, “Public Contact – General” (Board Review 19).

§ 87(2)(g)

Allegation R – Discourtesy: Police Officer Samuel Hui spoke discourteously to § 87(2)(b)

Allegation S – Abuse of Authority: Police Officer Samuel Hui threatened to arrest § 87(2)(b)

It is disputed whether or not PO Hui said, “It means we could fucking arrest you right now. Do you want to get arrested right now?” in response to § 87(2)(b) s question about what probable cause meant.

§ 87(2)(b) (Board Review 12) stated that, after PO Hui issued the summons to him, he exited his vehicle and told the officers that everything they did was illegal. PO Hui was standing near the rear of § 87(2)(b) s vehicle and told § 87(2)(b) to get back in his vehicle because he was causing traffic. § 87(2)(b) said that PO Hui had no right to check his car because he did not consent to it. § 87(2)(b) asked PO Hui what probable cause meant. Initially, § 87(2)(b) stated that PO Hui responded saying, “It means we could fucking arrest you right now. Do you want to get arrested right now?”

§ 87(2)(b) (Board Review 11) did not state that PO Hui threatened to arrest § 87(2)(b) or used any discourteous language. § 87(2)(b) was not sure which officer § 87(2)(b) was arguing with when he exited the vehicle.

PO Hui (Board Review 13) denied telling § 87(2)(b) “It means we could fucking arrest you right now. Do you want to get arrested right now?” PO Hui said he never curses. PO Hui told § 87(2)(b) to remain in his vehicle, but § 87(2)(b) kept getting closer to PO Hui. PO Hui explained to § 87(2)(b) that he was blocking traffic and if he did not remove his vehicle, he could be issued a summons.

Sgt. Hillmann (Board Review 14) did not recall § 87(2)(b) asking PO Hui what probable cause meant. Sgt. Hillmann did not hear PO Hui threaten to arrest § 87(2)(b) after he got out of his car. Sgt. Hillmann did not recall hearing PO Hui tell § 87(2)(b) “It means we could fucking arrest you right now. Do you want to get arrested right now?” Sgt. Hillmann did not hear PO Hui or any officer uses discourteous language.

PO Scheblein (Board Review 15) also did not hear PO Hui tell § 87(2)(b) “It means we could fucking arrest you right now. Do you want to get arrested right now?” but laughed and said that he thought it was a decent definition of probable cause. PO Scheblein did not recall any officer using profanity.

In the video taken by § 87(2)(b) (Board Review 03, 04, and 06) § 87(2)(b) exits the vehicle at 14:29 and gets back in the vehicle at 15:45. The entire time § 87(2)(b) is outside the vehicle, § 87(2)(b) and § 87(2)(b) are yelling at him to get back in the car. The only statements audible statements by officers are telling § 87(2)(b) to get back in the car. Any other statements were inaudible due to § 87(2)(b) and § 87(2)(b) yelling at § 87(2)(b) At no point can the statement, “It means we could fucking arrest you right now. Do you want to get arrested right now?” be heard.

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]
[Redacted].

Allegation T – Abuse of Authority: Police Officer Samuel Hui refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) (Board Review 12) stated that, while standing outside his vehicle he asked PO Hui for his shield number. PO Hui told § 87(2)(b) it was on the summons. When § 87(2)(b) looked at the summons, the shield number was not easy to understand.

§ 87(2)(b)'s statement (Board Review 11) corroborated § 87(2)(b)'s statement.

PO Hui (Board Review 13) stated that he gave § 87(2)(b) a contact card, which had all of his information on it, wrapped inside the summons. PO Hui did not remember if § 87(2)(b) ever asked for his shield number. PO Hui remembered telling § 87(2)(b) "Everything is in the summons," by which he meant that everything § 87(2)(b) needed to know was wrapped in the summons.

The copy of the summons that § 87(2)(b) provided at the time of his interview (Board Review 02) was completely illegible. However, the summons had also been crumpled and worn out.

The receipt received from IAB for the request sent to the 75th Precinct (Board Review 20) indicated that they did not have a copy of the original summons on file.

Members of the service must courteously and clearly state their rank, name, shield number and command, or otherwise provide them, to anyone who requests them to do so, Patrol Guide Procedure 203-09, "Public Contact – General" (Board Review 19).

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted].

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date